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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-62
CRYSTAL CLEAR COMMUNICATIONS, INC.	)	File No. BPH-901214MA
THE RADIO MINISTRIES BOARD OF VICTORY	)	
CHRISTIAN CENTER ASSEMBLY OF GOD, INC.	)	File No. BPH-901217MJ
For Construction Permit for a	)	
New FM Station on Channel 240A	)	
In Seelyville, Indiana	)	

ORIGINAL  
FILE

To: The Review Board

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OPPOSITION TO MOTION TO DISMISS NOTICES

Crystal Clear Communications, Inc. ("Crystal"), by its attorneys, hereby opposes The Radio Ministries Board of Victory Christian Center Assembly of God, Inc.'s ("Radio Board's") Motion to Dismiss Notices of Appeal. The Motion points out that the June 11, 1992 Memorandum Opinion and Order, FCC 92M-657, dismissing Crystal's application did not terminate the proceeding. Therefore, Radio Board urges, the 5 day/5 page procedures applicable to termination-of-party-status-without-termination-of-proceeding situations should apply.

As is apparent from Radio Board's pleading, not to mention the ALJ's Order, there has been some confusion in the

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prosecution of Crystal's application. Undersigned counsel was not retained until the late afternoon of June 22, 1992 and was only able to ascertain at that point that Crystal's application had been dismissed and that there had been one other applicant. It was assumed, therefore, that the ALJ's action had resulted in the termination of the proceeding. This assumption was evidently incorrect.

Nevertheless, there are strong reasons not to dismiss Crystal's appeal. First, since the pre-hearing conference was cancelled (per the June 11, 1992 Order) and further developments in the case have been limited to Radio Board's basic eligibility, no disruption or prejudice will result from prosecution of the appeal. Thus, while the proceeding was not technically terminated, no comparative aspects of the case have been pursued. Since avoidance of disruption to on-going proceedings is the basis for the 5-day rule of Section 301(c)(2), Burwood Broadcasting of Memphis, Ltd., 60 RR 2d 123 (Rev. Bd. 1986), and since no such disruption is occurring here, the basic integrity of the rules is preserved.

The 5-day rule is itself extremely constricted since, in the ordinary course of delivering the U.S. Mail, applicants do not receive FCC orders for several days. Here the problem was exacerbated by the fact that Crystal's prior counsel had recently re-located to Seattle and is, in any event, extremely difficult to

reach by telephone.

The Review Board has historically been loathe to deny litigants a fair hearing on the merits of their causes based on the technicalities of Section 1.301. CJS Investments, Inc., 67 RR 2d 1648 (Rev. Bd. 1991) (late-filed appeal considered on merits when 12 days late); Burwood Broadcasting, supra (appeal considered on merits though untimely); WMID, Inc., 14 RR 2d 769 (Rev. Bd. 1969) (untimely appeal considered on merits where no prejudice resulted and delay was occasioned by a misunderstanding of the applicability of computation rule). The equities here are particularly compelling given the obviously jangled hand-off from previous counsel to undersigned counsel in the narrow filing window. Radio Board has not been prejudiced in any way by the glitch in filing procedures, and the Review Board's resolution of the merits of the appeal will not be materially delayed at all.

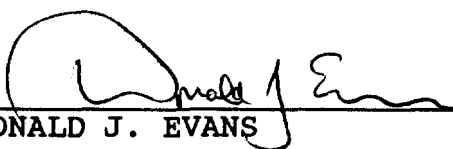
Accordingly, the Motion to Dismiss Crystal's Appeal should be denied for the reasons set forth herein. By a simultaneous filing, Crystal is requesting leave to file the substance of its appeal within five days.

Respectfully submitted,

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(202) 293-0700

CRYSTAL CLEAR COMMUNICATIONS, INC.

By:


  
DONALD J. EVANS  
Its Counsel

July 1, 1992

**Certificate of Service**

I, Sherry L. Schunemann, a secretary in the law office of McFadden, Evans & Sill, do hereby certify that a copy of the foregoing "Opposition To Motion To Dismiss Notices" was hand delivered this 1st day of July, 1992 to the following:

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Sherry L. Schunemann